

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL BURNIE WELLBORN,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

CASE NO. 1:05-CV-346

HON. ROBERT J. JONKER

ORDER

This matter is before the Court on the Report and Recommendation of the Magistrate Judge (docket # 32) and Petitioner's Objections to the Report and Recommendation (docket # 35). Since the date of the Report and Recommendation and Objections, the Sixth Circuit has issued new authority that appears to bear directly on the issues in this case. *See Smith v. Berghuis*, 543 F.3d 326 (6th Cir. 2008). This new authority should be considered before any judgment enters in the case. Accordingly, **IT IS ORDERED**: the matter is referred again to the Magistrate Judge for further briefing and other proceedings as appropriate in light of *Smith v. Berghuis*, 543 F.3d 326 (6th Cir. 2008). The existing Report and Recommendation and the Plaintiff's objections to it, are DISMISSED as moot in light of an anticipated new Report and Recommendation including analysis of the new appellate authority.

Dated: February 6, 2009

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE